

CAlifornians for Renewable
Energy, Inc. (CARE)
C/o Michael Boyd
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State of California
Energy Resources Conservation
And Development Commission

In the Matter of:)	
)	Docket No. 01-AFC-4
)	
Application for Certification for the)	Reply to Applicant's Comments on
East Altamont Energy Center)	the Errata to the Revised Presiding
[East Altamont])	Members Proposed Decision
_____)	

**CARE'S REPLY TO APPLICANT'S COMMENTS ON THE ERRATA TO THE
REVISED PRESIDING MEMBER'S PROPOSED DECISION**

The Energy Commission's expert Staff assigned to this project has determined that the projects impacts in San Joaquin Valley will require additional mitigation of 175 tons per year of Ozone precursors and 50 tons per year of pm-10. The record shows no evidence that any party including the Committee, applicant, or either air district, performed any CEQA analysis on this project necessary for the Commission's approval of the project, other than the Energy Commission Staff. Both air districts have admitted on the record that they have performed no CEQA analysis on this project. Chairman Mr. Keese has given a break to Calpine to allow Calpine to build their plant for a mere 66.7 ton per year of additional NOx mitigation thereby failing to comply with CEQA's requirements for mitigation to the maximum extent feasible. Calpine refuses to even accept this inadequate mitigation as their obligation.

In their brief the applicant advances several methods by which they can avoid their obligations to the community. The committee has already visited these issues many times and it is inappropriate to raise these issues again. The

applicant asserts that the project is not viable under the existing condition AQ-SC5 that the committee has developed. The applicant may be right this project is no longer viable. Not because the Energy Commission Staff, not because of the Committee who has made every effort to appease the applicant, but because the applicant is unwilling to provide the air quality mitigation necessary to offset the projects impacts. The applicant also proposes that the BAAQMD report annual emissions of NOx by the facility and the applicant be allowed to reduce its liability for impacts to the community. This proposal is flawed.

The Applicant ignores the Applicant's own failure to comply with federally-mandated requirements of the Clean Air Act. For example, the State Implementation Plan and associated regulations adopted pursuant to the Clean Air Act in accordance with 40 Code of Federal Regulations section 52.220(c)(63) directs that the BAAQMD must await the Commission's completion of its CEQA review where, as here, the BAAQMD is not itself preparing separate CEQA compliance documentation, before issuing a Prevention of Significant Deterioration ("PSD") permit. Contrary to this federal requirements the BAAQMD is purporting to issue a PSD permit for the Project prior to the Commission's completion of its certified CEQA functional equivalent program authorized under 14 California Code of Regulations section 15251(k). Federal regulations incorporated into the BAAQMD PSD permitting requirements of 40 Code of Federal Regulations section 51.166(q)(2)(v) require the BAAQMD to hold a public hearing in connection with Calpine Corporation's PSD application in order to receive written and oral comments "on the air quality impact at the source, alternatives to it, the control technology required, and other appropriate considerations." Contrary to this requirement, the BAAQMD held no public hearings on Calpine Corporation's PSD application for the Project.

Also, federal regulations promulgated under the Clean Air Act prohibit the BAAQMD from issuing a PSD permit for the Project unless Calpine Corporation first provides a current certification that all of its major facilities within California are either in compliance, or on a schedule of compliance, with all applicable state and federal emissions limitations and standards. Contrary to this requirement,

the BAAQMD purported to issue a PSD permit for the Project despite the absence of a current certification of compliance from Calpine Corporation. In any event, Calpine Corporation is not currently in compliance, or on a schedule of compliance, with all applicable state and federal emission limitations and standards in California.

The BAAQMD has been negligent in reporting air quality violations by the applicant as evinced in the attached NOV Reports on two of Calpine facilities the Los Medanos and the Delta Energy Center projects.¹ It is not clear if the compliance manager is even aware of these violations. In light of the applicants many violations it is not clear how an authority to construct or PSD permit can be issued for the EAEC as the applicants other plants are both severely out of compliance with their permit conditions and communication between the air district and the CEC compliance manager appears to be inadequate. Out of fifty-seven Notice(s) Of Violation fifty two are listed as “Pending Final Disposition.”

The applicant has also proposed that the SJVUAPCD be allowed to determine the annual NOx reductions achieved by the AQMA. Clearly it has been established that the SJVUAPCD lacks the independence to make such a determination as they are bound by article 5 of their agreement with the applicant to protect the applicant’s interests even against the CEC. The applicant and the SJVUAPCD propose to retrofit farm equipment and heavy diesel engines. How will these reductions be tracked quantified and verified and by who? There are no set standards for this equipment since there is no established method to measure these reductions. Reductions are based purely on estimates and source testing will not be feasible. More independent monitoring is necessary even to determine if the applicant will achieve the necessary NOx reductions in any year of operation.

On the issue of Fire Protection CARE wishes to introduce into the record news reports related to the explosion and fire that occurred Tuesday July 8th,

¹ The CEC is Party to a Complaint before the US EPA Office of Civil Rights filed April 16, 2001, also against the BAAQMD, CARB, and the City of Pittsburg California over the two power plants. The investigating and ADR is ongoing on this complaint – one of the first accepted for investigation by US EPA.

2003 at 4:00 PM at Moss Landing Power Plant Project (99-AFC-4) [Approved by Commission - October 25, 2000]. We wish to make this untimely evidence part of the record to demonstrate the lack of adequate mitigation and fire protection being provided by the CEC in permitting these types of projects statewide. You ignore this at your own risk.

Respectfully submitted,

By 

Filed Electronically 7-10-03
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Verification

I am an officer of the intervening corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 10th, 2003, at Soquel, California



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Oil-tank fire rages unchecked

By ROBYN MOORMEISTER and JULIE COPELAND

Sentinel staff writers

MOSS LANDING — Fire raged out of control Tuesday in an old fuel-oil tank at the Duke Energy plant, shooting flames and a blanket of thick, billowing black smoke that could be seen for miles.

The fire started in a 6 million-gallon tank being torn down in the east tank farm, a part of the power plant that is being dismantled. The tank contained 1.2 million gallons of No. 6 fuel oil, which fired the plant until the mid-1990s, according to Pat Mullen, public affairs manager for Duke Energy.

He said construction crews were demolishing the tank, one of more than a dozen being torn down as part of the company's modernization, which switched power generation to natural gas.

Mullen said most of the oil has been removed from the old tanks, but as construction crews were working to remove the thick liquid Tuesday, something sparked a fire inside the massive tank.

Within an hour of the fire, which started around 4 p.m., five of six propane tanks inside the 150-foot-diameter tank exploded in a five-minute span, sending fire crews and Duke Energy employees on nearby Highway 1 running for cover.

Heat from the explosions and raging flames were felt more than 100 yards from the burning tank.

No one was hurt, but firefighters pulled away from the tank and let the fire burn untouched for hours.

"We're waiting for the other tank to blow," Duke employee and reserve firefighter Brad Jones said from the safety of his North County fire engine. "It could go any time."

Other nearby propane tanks caught fire and spewed flames hundreds of feet into the air.

The oil tank, which was burning out of control Tuesday night, is separated from the working part of the plant by more than a quarter-mile. It did not affect the plant's operation.

Ron Stefani, division chief for North County Fire Protection District of Monterey County, said 13 engine companies responded, including three from his district. Others included Watsonville, Salinas, Monterey, Seaside, Marina, Fort Ord, Prunedale and Spreckels.

Late Tuesday, fire crews were planning an aggressive attack with foam used to fight fuel-oil fires, Stefani said.

He estimated at least 5,000 gallons of foam would be needed.

"We're gathering all the available foam from every department," Stefani said, including 600 gallons from San Jose.

The foam, which comes in 5-gallon cans and costs \$25 a gallon, is siphoned into a fire line. It mixes with water and is sprayed from the hose onto the fire.

"It suppresses the vapors, throwing a blanket across the fire and stopping vapors from coming up, which stops the fire," Stefani said. "We have to have enough to spread across the entire area and cover it or the fire will flare up and melt the foam away."

The only other option is to let the fire burn out. Just how long that would take was being calculated by engineers, Stefani said.

While the cause of the fire is unknown, construction crews reportedly were trying to remove the oil, which has the viscosity of molasses, when the fire started. That process is difficult, Stefani said.

"You almost have to get in and scrape the stuff out. It's real messy," he said.

Crews may have been trying to cut access holes in the side of the steel tank before the fire started. That could have sparked the fire, Stefani said.

"This is the second round of tanks being demolished," he said. "The first round went flawlessly. We don't know what happened exactly here."

Fuel oil won't burn until it reaches 100 degrees and creates fumes, so there "had to be some accessory heating source to get it burning," Stefani said. "You could throw a match on it all day and it wouldn't start on fire. ...

"Once it ignites, you have to have enough of it up to that (100-degree) point to burn to sustain combustion or it will just go out."

The oil is heated by propane in the pipeline to move it. Those propane tanks exploded in the blaze.

The heat of the fire increased the viscosity of the oil.

"Once the oil started burning, it started flowing out of the tanks and filled out the bermed containment area and ignited the propane tanks outside," Stefani said.

The tank is surrounded by a containment berm, designed to keep flaming fuel oil from spreading. But fire officials were concerned that the steel tank would collapse, spilling its contents.

North County Division Chief Mike Vindhurst said 15-20 Duke employees inside the plant were serving as "technical support" to determine the best course of action during the fire.

"We train heavily for flammable-liquid fires, but when you get a fire with this amount of fuel and not having the right amount of foam here, it's difficult to be prepared for it," Stefani said, noting that when the tanks were full, the power plant had foam on site.

North County Fire and Monterey County Environmental Health issued the permits allowing the tank demolition. Stefani said if they determine the fire was caused by an unsafe or deliberate act, or if protocol wasn't followed, they would be responsible for the costs of fighting the fire. The permit prohibits cutting or using an igniting source.

Fire and environmental crews were assessing the toxicity of the smoke Tuesday night, but Stefani said the "good news is that the smoke is really staying up in the air. It's a warm night. We're not getting the normal coastal influence that brings fog in and would lay the smoke down. It's staying up high. The more it spreads up there, the more diluted it becomes and the less potential for it to become toxic."

Scratchy throats and burning eyes are common side effects caused by sulfur dioxide byproducts of burning oil.

North County Fire Marshal Michael Roberson said everyone within two miles of the fire should remain indoors or leave the area to avoid the thick black smoke, which, he said, can cause respiratory problems such as coughing and throat irritation.

Roberson said the smoke could cause the high-voltage lines at the plant to arc, cutting power to tens of thousands in Monterey, Los Banos and San Jose.

PG&E spokesman Michael McColl said that arcing caused by smoke is unusual, but power could be re-routed within minutes if it occurs.

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